UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

EMISSIVE ENERGY CORPORATION,	:	Civil No. CA 04 482L
Plaintiff,	:	
v.	:	
COAST CUTLERY CO.,	:	
Defendant.	:	

DEFENDANT'S STATEMENT OF UNDISPUTED FACTS

Pursuant to Local Rule 12.1(a)(1), defendant Coast Cutlery Co. presents the following statement of undisputed facts:

1. On November 18, 2002, plaintiff Emissive Energy Corporation filed a prior lawsuit in this Court in Emissive Energy Corp. v. Zweibruder Stahl Warenkontor GmbH & Coast Cutlery Co., No. 02-497L.

2. Plaintiffs' Verified Complaint in the prior action claimed ownership of a patent protecting the design of an LED flashlight head utilizing a distinctive ornamental round head with a Gatling gun appearance created by multiple light emitting diodes ("LED"), each in a separate reflector cup or tube. A true copy of the Verified Complaint is attached as Exhibit "A." See Ex. A ¶¶ 7, 10; see also Compl. at Ex. 2.

3. In the prior action, plaintiff sued defendant Coast Cutlery for identical claims asserted in this case based on the same operative facts for patent infringement, alleging that Coast Cutlery's accused flashlight copied plaintiff's unique design of placing each LED in its own separate reflector cup or tube, see Ex. A ¶ 17, and for false advertising, alleging that Coast Cutlery's packaging for the flashlight contained specific false and misleading statements of fact. Id. ¶¶ 24-30.

4. In July 2003, Coast Cutlery entered into a settlement agreement with plaintiff to resolve the prior action, and the parties mutually released each other from all claims. Under the agreement, Coast Cutlery agreed to cease all manufacture, promotion, distribution, and sale of the "flashlight product that includes multiple LEDs each in an individual reflector cup or tube which are configured in the three, four, five, six, or seven-hole configuration depicted" in plaintiff's patent. See Defendant Coast Cutlery's Declaration of David Brands ("Brands Decl."), Ex. A ¶ 2. Coast Cutlery performed that obligation consistent with the deadline of December 31, 2003. Brands Decl. ¶¶ 4-5.

5. Coast Cutlery also agreed to stop importing the accused product by October 15, 2003, and agreed to phase out its existing inventory of stock by December 31, 2003. Brands Decl.,

Ex. A at 2-3 ¶ 2. Coast Cutlery complied with these obligations as well. Brands Decl. ¶ 5.

6. During 2003, Coast Cutlery actually redesigned its product to eliminate the use of three separate reflector cups or tubes. Instead, the new design combines the LEDs in three reflector tubes arranged in a cloverleaf pattern, which creates a single reflective space that enhances the light projecting power of the flashlight over the original design. Brands Decl. ¶¶ 4-7. Coast Cutlery also redesigned and changed its packaging and text contained on the packaging to accurately reflect the new redesigned product and features. Id.

7. Since entering into the settlement agreement with plaintiff in July 2003, Coast Cutlery has not engaged in any acts constituting false advertising or infringement of plaintiff's patent or trademark rights. Brands Decl., passim.

8. On July 14, 2003, this Court entered a Dismissal Stipulation, under which plaintiffs' Verified Complaint in the first action was ordered "dismissed with prejudice."

9. Plaintiff concedes that Coast Cutlery's new product design for the LED flashlight itself as described above in paragraph 6 complies with the settlement agreement. Affidavit of Charles S. Beal, Ex. A at 31-32, 34-36, 38 and 44-

45. However, plaintiff evidently still takes issue with the packaging.

10. No reasonable jury could conclude that plaintiff's redesigned product packaging and text infringes on plaintiff's patent or trademark. Brands Decl. ¶ 8 & Ex. 2 (true copies of new design and packaging).

DATED this 5th day of August, 2005.

Respectfully submitted,

COAST CUTLERY CO.
By its attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S STATEMENT OF UNDISPUTED FACTS** on the following party(ies):

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by delivering a true and correct copy thereof to said party(ies) on the date stated below.

DATED this 5th day of August, 2005.

Charles S. Beal
Attorneys for Defendant

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